

Message Text

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LOS COLLECTIVE

AMEMBASSY KATHMANDU

AMEMBASSY SUVA

C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 06278

E.O. 11652:GDS

TAGS: PLOS

SUBJECT: LOS CONFERENCE - APRIL 21 HIGHLIGHTS

BEGIN SUMMARY: THE NJENGA WORKING GROUP (NG-1) CONCLUDED DISCUSSION ON ANNEX II. AT COMMITTEE I SESSION ENGO CONSULTED WITH DELEGATES ON THE ORGANS OF THE AUTHORITY. NEGOTIATING GROUP 4 CONTINUED MEETING ON LL/GDS ACCESS TO LIVING RESOURCES. COMMITTEE II HELD DELIBERATIONS ON OTHER ISSUES NOT IDENTIFIED IN THE CONFERENCE PROGRAM OF WORK. COMMITTEE III REVIEWED QUESTIONS ON MARINE POLLUTION. THE MEXICAN PROPOSAL TO ELIMINATE DISPUTE SETTLEMENT FOR EEZ FISHERIES WAS DISCUSSED IN NEGOTIATION GROUP 5. NEGOTIATING GROUP 7 HEARD SPEAKERS ON DELIMITATION RULES OF EQUITY AND EQUIDISTANCE/SPECIAL CIRCUMSTANCES. END SUMMARY.

1. THE NJENGA WORKING GROUP MET ON THE MORNING OF APRIL
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21 AND CONCLUDED ITS DISCUSSIONS OF ANNEX II. THE DISCUSSION WAS INCONCLUSIVE AND ILLUSTRATED A BASIC DIFFERENCE BETWEEN NORTH AND SOUTH IN THEIR APPROACH TO THE ENTERPRISE. THE SOUTH ENVISIONS THE ENTERPRISE AS AN ENTITY WHICH WILL RECEIVE PREFERENTIAL TREATMENT DURING A TRANSITIONAL PERIOD AFTER WHICH IT ALONE WILL MINE THE SEABED; THE NORTH ENVISIONS AN ENTERPRISE WHICH MUST

BECOME ECONOMICALLY VIABLE AND WHICH WILL FAIRLY COMPETE WITH PRIVATE AND STATE-SPONSORED SEABED MINERS.

2. THE MAIN DIFFERENCE WHICH AROSE AMONG THE INDUSTRIALIZED COUNTRIES RELATED TO A PROPOSAL BY CANADA THAT THE EXPLORATION AND EXPLOITATION PHASES OF AN APPLICANT'S CONTRACT BE SEPARATED. THE NETHERLANDS OPPOSED THIS BECAUSE IT WOULD BE VERY DIFFICULT FOR AN APPLICANT TO CONDUCT EXPLORATION WITHOUT KNOWING WHAT SORT OF CONTRACTUAL ARRANGEMENTS HE WILL FACE IN THE EXPLORATION PHASE.

3. NJENGA DISTRIBUTED HIS PERSONAL REDRAFT OF ARTICLE 151 AND ASKED FOR DELEGATES TO COMMENT ON IT AT A LATER DATE AFTER THEY HAD STUDIED IT. THE DRAFT, WHICH IS A GREAT IMPROVEMENT OVER THE ICNT, IS BEING SENT SEPTEL.

4. IT WAS AGREED IN THE GROUP THAT ON THE EVENINGS OF APRIL 27TH AND 28TH THERE WOULD BE SEMINARS CONDUCTED BY EXPERTS ON THE SUBJECT OF NODULE GEOLOGY AND FINANCIAL ARRANGEMENTS. THE WORKING GROUP WILL MEET AGAIN APRIL 24 IN ORDER TO DISCUSS ARTICLES 152 AND 153 ON REVIEW.

5. CHAIRMAN ENGO HELD AN INFORMAL MEETING TO CONSULT WITH DELEGATES ABOUT THE WORK OF HIS GROUP ON THE ORGANS OF THE AUTHORITY. IT WAS DECIDED THAT AN INFORMAL FORMAT WITH SMALL WORKING GROUPS WOULD BE BEST TO DISCUSS PROBLEMS
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IN THIS AREA. SOME SUBSTANTIVE DISCUSSION WAS HELD IN WHICH SPEAKERS MAINTAINED PREVIOUS POSITIONS.

6. AMBASSADOR KOH'S WORKING GROUP ON FINANCIAL ARRANGEMENTS SPENT MOST OF THE AFTERNOON ON START-UP ADMINISTRATIVE EXPENSES FOR THE ENTERPRISE. THE U.S. STATED THAT THE PROVISION OF MONEY FOR SUCH EXPENSES IS ALREADY IMPLICIT IN ANNEX III, PARAGRAPH 10(C)(III) AND SUGGESTED LANGUAGE TO MAKE IT EXPLICIT. AMBASSADOR KOH IS TAKING THE DISCUSSION ON THIS SUBJECT UNDER ADVISEMENT AND WILL SUBMIT TO THE WORKING GROUP CONCRETE LANGUAGE ON IT AFTER CONSULTING WITH REPRESENTATIVE DELEGATES.

7. IN THE KOH GROUP THE SOVIETS STATED THAT THEIR PREFERRED POSITION WAS THAT SEABED MINERS SHOULD MAKE THE NECESSARY CONTRIBUTIONS TO FINANCE THE ENTERPRISE. THEY ALSO STATED, HOWEVER, THAT IF PARAGRAPH 10(C)(III) OF ARTICLE III (THE U.S. PROPOSAL) WAS ACCEPTABLE TO THE GROUP OF 77, THEN THE SOVIETS WOULD ACCEPT THAT AS THEIR FALL BACK PROVISION.

8. NEGOTIATING GROUP 4 (NG. 4) MET ON APRIL 21 AND

DISCUSSED TWO INTERRELATED QUESTIONS: (1) WHETHER LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES (LL/GDS) ACCESS TO THE LIVING RESOURCES OF THE EEZ SHOULD BE PREFERENTIAL OVER THIRD STATES AND (2) WHETHER IN THIS RESPECT, A DISTINCTION SHOULD BE MADE BETWEEN DEVELOPED AND DEVELOPING LL/GDS. COASTAL STATES, INCLUDING PERU, MADAGASCAR, ARGENTINA, SPAIN, PAKISTAN, NORWAY AND URUGUAY, GENERALLY DISAPPROVED THE PROPOSITION THAT LL/GDS ACCESS SHOULD BE PREFERENTIAL, ALTHOUGH SEVERAL CONCEDED AN OBLIGATION TO GIVE SPECIAL CONSIDERATION TO DEVELOPING LL STATES, PROVIDED THAT THIS WERE LIMITED TO THE SURPLUS ONLY. ALL COASTAL STATES REFUSED TO RECOGNIZE ANY PREFERENTIAL TREATMENT FOR DEVELOPED GDS. THIS LATTER GROUP, INCLUDING POLAND, AUSTRIA, CZECHOSLOVAKIA, AND THE

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GDR, NONETHELESS CONTINUED TO REAFFIRM THEIR LONG-STANDING POSITION OF PAST SESSIONS (I.E., PREFERENTIAL RIGHT OF ACCESS OVER DEVELOPED NON-GDS TO THE SURPLUS IN THE ZONES OF DEVELOPED COASTAL STATES IN THE SAME REGION OR SUB-

REGION OR IN AREAS OF TRADITIONAL FISHING). TRINIDAD AND TOBAGO, ONE OF THE SO-CALLED NEUTRAL MEMBERS OF NG-IV, PUT FORWARD A PROPOSAL WHICH WOULD SET-ASIDE A CERTAIN PART OF THE LIVING RESOURCES OF THE EEZ FOR LL/GDS EXPLOITATION. THIS FRACTION WOULD BE DETERMINED BY A MIXED COMMISSION OF THE INTERESTED STATES. THE SUGGESTION DID NOT ELICIT SUPPORT AND WAS CLEARLY VIEWED AS A NON-STARTER.

9. COMMITTEE II RESUMED DISCUSSION OF WHETHER "OTHER ISSUES" NOT SPECIFICALLY IDENTIFIED IN THE CONFERENCE PROGRAM OF WORK SHOULD BE THE SUBJECT OF FURTHER DEBATE AND NEGOTIATION. IT WAS AGREED THAT: (A) SMALL NEGOTIATING GROUPS COULD BE ORGANIZED WITHOUT INTERVENTION BY THE CHAIR ON THE INITIATIVE OF DELEGATION WITH SPECIAL
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INTERESTS IN A SPECIFIC ISSUE; (B) ALTHOUGH THESE GROUPS WOULD HAVE NO SPECIFIC MANDATE FROM THE COMMITTEE, THE COMMITTEE WOULD PLAY A FACILITATIVE ROLE BY PROVIDING THE NECESSARY SECRETARIAT SERVICES, WHEN AVAILABLE; (C) THE WORK OF THE SELF-CONSTITUTED CONSULTATIVE GROUPS WOULD BE SUBORDINATE TO THE WORK OF THE ESTABLISHED NEGOTIATING GROUPS DEALING WITH "HARD-CORE ISSUES"; (D) THE ESTABLISHMENT OF CONSULTATIVE GROUPS ON A PARTICULAR ISSUE DID NOT PRECLUDE THAT ISSUE FROM BEING RAISED INFORMALLY IN THE FULL COMMITTEE, ALTHOUGH AGUILAR NOTED THAT A REOPENING OF FULL DEBATE ON SUCH ISSUES WOULD BE DISCOURAGED. COMMENT. FROM OUR PERSPECTIVE, SOLUTION SATISFACTORY SINCE IT FORECLOSES COMMITTEE ESTABLISHMENT OF FORMAL GROUPS DEALING WITH OTHER ISSUES NOT ALREADY IDENTIFIED BY THE PLENARY. WE ARE CLEARLY NOT BOUND TO PARTICIPATE IN RUMP GROUPS AND CAN USE COMMITTEE TO ATTACK ANY RESULTS. AGUILAR WILL HOLD A LIMITED NUMBER OF INFORMAL OR FORMAL MEETINGS OF COMMITTEE TO DISCUSS THESE OTHER ISSUES IF STATES WISH. THUS, CONSIDERATION OF SUCH ISSUES SHOULD BE DIFFUSE AND NOT FORM BASIS TO CHANGE ICNT.

10. NEGOTIATING GROUP VI (DEFINITION OF THE OUTER LIMITS OF THE CONTINENTAL SHELF AND REVENUE SHARING). COLOMBIA OPENED THE DEBATE BY OPPOSING ANY DEFINITION WHICH EXTENDED THE SHELF BEYOND 200 MILES. ARGENTINA AND TURKEY PRAISED THE RESULTS OF THE SECRETARIAT REPORT, REITERATED THEIR POSITION THAT THE SHELF IS A NATURAL PROLONGATION OF THE LAND TERRITORY, FULLY CONSISTENT WITH CONTEMPORARY INTERNATIONAL LAW, AND LABELED AS "UNTHINKABLE" COLOMBIA'S SUGGESTION THAT THE GEOMORPHOLOGICAL CRITERIA FOR DEFINING THE SHELF BE DELETED FROM ARTICLE 76. AUSTRIA AND SINGAPORE, IN A SIGNIFICANT INTERVENTION, NOTED THAT THEY WOULD REPEAT WOULD ACQUIESCE IN COASTAL

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STATE EXTENSION OF JURISDICTION BEYOND 200 N.M. PROVIDED TWO CONDITIONS WERE MET, NAMELY: (1) RECOGNITION OF LL/GDS RIGHTS OF ACCESS TO THE LIVING RESOURCES OF THE EEZ, AND (2) A REVENUE SHARING FORMULA (ARTICLE 82) WHICH IS EQUITABLE TO COASTAL STATES AND THE LL/GDS.

11. COMMITTEE III INFORMAL WORKING GROUP UNDER CHAIRMAN VALLARTA (MEXICO) MET TO CONTINUE GENERAL DISCUSSIONS ON MARINE POLLUTION TEXT.

12. FRANCE FORMALLY INTRODUCED A NEW ARTICLE 212(2) BIS THAT WOULD ENABLE STATES TO POOL PORT ENTRY REQUIREMENTS. A STATE PARTY TO SUCH AGREEMENT COULD ENSURE, IN ITS OWN TERRITORIAL SEA, THAT THE CONDITIONS FOR ENTERING PORTS OF OTHER STATES PARTY TO THE AGREEMENT WERE OBSERVED. THIS WOULD INCLUDE CONDITIONS RELATING TO THE DESIGN, CONSTRUCTION, MANUFACTURING AND EQUIPMENT OF VESSELS.

13. FRANCE ALSO FORMALLY INTRODUCED AN AMENDMENT TO ARTICLE 222 (INTERVENTION) THAT WOULD ALLOW A STATE TO IMPOSE POLLUTION PREVENTION MEASURES ON SHIPS FOLLOWING A MARITIME CASUALTY SO LONG AS THREAT OF POLLUTION EXISTED IN REGARD TO THE STATES COASTLINE OR RELATED INTERESTS, INCLUDING FISHING. THIS AMENDMENT WOULD ELIMINATE THE REQUIREMENT THAT SUCH ACTIONS CAN BE TAKEN ONLY IF A "GRAVE AND IMMINENT" DANGER TO THE STATE EXISTS.

14. DISCUSSION ON 222 REVEALED GENERAL SUPPORT FOR SOME INCREASED STATE POWER RELATING TO INTERVENTION. SEVERAL DELEGATIONS, INCLUDING THE USSR AND SPAIN, SUPPORTED THE GENEVA CONCEPT BUT WISHED TO MAINTAIN THE "GRAVE AND IMMINENT" TEXT.

15. USA SUGGESTED THAT ARTICLE 212 BE AMENDED TO REQUEST

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THAT IMCO DEVELOP NOTICE REQUIREMENTS FOR DISCHARGES
THAT THREATEN THE STATE AND ROUTING SYSTEMS FOR VESSELS
IN CONGESTED AREAS.

16. G-5 MET AND CONTINUED DISCUSSION OF FRENCH PROPOSAL
ON 222 (INTERVENTION) AND U.S. AMENDMENTS. NO FORMAL
AGREEMENT REACHED ON ANY ARTICLE AS YET.

17. NEGOTIATING GROUP 5 MET ON APRIL 21, AND CONTINUED
TO DISCUSS ICNT 296 (1) AND (4). TWENTY TWO DELEGATIONS
MADE INTERVENTIONS. TWELVE SPOKE IN SUPPORT OF THE
SO-CALLED MEXICAN PROPOSAL TO DELETE 296(4) AND THUS
ELIMINATE ALL JURISDICTION OVER ECONOMIC ZONE FISHERIES.
THESE WERE BRAZIL, ICELAND, LIBYA, MADAGASCAR, NIGERIA,
NORWAY, PERU, SENEGAL, SIERRA LEONE, SOMALIA, URUGUAY AND
VENEZUELA. THE REMAINING INTERVENTIONS EITHER SUPPORTED
THE RETENTION OF 296(4) OR ADVOCATED THAT IT BE
STRENGTHENED ALONG THE LINES OF THE SWISS PROPOSAL MADE
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AT THE PREVIOUS MEETING. SPEAKING IN FAVOR OF RETAINING
296(4) WERE GHANA, THE NETHERLANDS, PORTUGAL, THE SOVIET
UNION, AND THE UKRANIAN SSR. AUSTRIA, BAHRAIN, IRAQ,
JAPAN AND SWAZILAND ADVOCATED THE SWISS PROPOSAL, WITH
THE LATTER THREE INDICATING A WILLINGNESS TO ACCEPT

296(4) WITH SOME CLARIFICATIONS AS AN ALTERNATIVE.
BAHRAIN, SUPPORTED BY SWAZILAND PROPOSED SAME DRAFTING
CHANGES TO THE SWISS PROPOSAL.

18. THE SOVIET UNION, WITH THE ENDORSEMENT OF THE
UKRANIAN SSR, PROPOSED THAT 296(4)(A) BE AMENDED TO
INCLUDE A REFERENCE TO ICNT 66. THIS WOULD EXEMPT
FROM ADJUDICATION DISCRETIONARY DECISIONS OF A COASTAL
STATE CONCERNING SALMON ORIGINATING IN ITS WATERS. THE
SOVIET UNION PROPOSED ALSO THAT 297(1)(B) BE AMENDED
BY STRIKING EVERYTHING AFTER "...NON-COMMERCIAL SERVICE"
AND SUBSTITUTING ", HOWEVER, ENFORCEMENT OF LAWS ENACTED
IN ACCORDANCE WITH THIS CONVENTION SHALL NOT BE REGARDED
AS MILITARY ACTIVITIES." THIS WOULD EFFECTIVELY ELIMI-
NATE THE SO-CALLED LAW ENFORCEMENT EXCEPTION INSERTED
IN THE ICNT.

19. PERU, FOLLOWED BY URUGUAY, INDICATED THAT IT WOULD
BE PREPARED TO EXAMINE, AS AN ALTERNATIVE TO 296(4), A
PROVISION SUBJECTING ANY CASE OF ABUSE OR MISUSE OF
RIGHTS TO JUDICIAL REVIEW, IF THIS PROVISION APPLIED
ALSO TO ALL OTHER EXCEPTED AREAS (INCLUDING PRESUMABLY
MILITARY ACTITIVITIES.)

20. THE WORKING PROGRAM OF NEGOTIATING GROUP 7 CALLED
FOR IT TO DISCUSS ICNT ARTICLES 74 AND 83 IN DETAIL AT
ITS MEETING ON APRIL 21. NEVERTHELESS, MOST OF THE
ACTUAL DISCUSSION WAS SIMPLY AN EXTENSION OF THE GENERAL
DEBATE FROM THE PREVIOUS MEETING. THERE WAS AGREEMENT
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ON TWO POINTS, THAT DELIMITATION SHOULD BE ACCOMPLISHED
BY AGREEMENT IF POSSIBLE, AND THAT THE RESULT SHOULD BE
EQUITABLE. BEYOND THIS THERE WAS NO AGREEMENT. SPEAKING
IN FAVOR OF THE EQUIDISTANCE/SPECIAL CIRCUMSTANCES RULE
WERE ITALY, COLOMBIA, SPAIN, BANGLADESH, YUGOSLAVIA, AND
JAPAN. INTERVENTIONS FAVORING THE EQUITABLE
PRINCIPLES RULE WERE MADE BY LIBYA, IRELAND, MOROCCO,
NICARAGUA, PAKISTAN, MADAGASCAR, VENEZUELA AND REPUBLIC
OF KOREA.

21. BULGARIA PROPOSED CHANGING PARAGRAPH 2 OF ICNT 74
AND 83 TO MAKE MUTUAL CONSENT A PREREQUISITE OF THIRD
PARTY DISPUTE SETTLEMENT.

22. THE DELEGATE OF MOROCCO SUGGESTED THAT MORE PROGRESS
MIGHT BE MADE IN A SMALL WORKING GROUP. HE PROPOSED
SUCH A GROUP BEGIN CONSULTATIONS IN THE ABSENCE OF THE
CHAIRMAN UNDER THE DIRECTION OF JAGOTA OF INDIA. THE
CHAIRMAN (MANNER OF FINLAND) DID NOT ACT ON THIS
SUGGESTION. AT THE END OF THE MEETING, HOWEVER, HE SAID

THAT HE HIMSELF WOULD UNDERTAKE INFORMAL CONSULTATIONS
WITH INTERESTED PARTIES OVER THE WEEK-END. (HE INDICATED
PRIVATELY FOLLOWING THE MEETING THAT HE WOULD ATTEMPT
TO FIND COMPROMISES FOR PARAGRAPHS 2 AND 3 OF ICNT 74
AND 83.) RICHARDSON

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